

By Munford Super

S.J.R. No. 26

SENATE

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to the immunity of a
2 city or town from liability for damages arising from its
3 proprietary functions.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 Insert Floor Am. #2

6 SECTION 1. Article XI of the Texas Constitution is amended
7 by adding Section 13 to read as follows:

8 Sec. 13. (a) A city or town is immune from liability for
9 damages arising from its proprietary functions.

10 (b) A statutory waiver of immunity that applies to the
11 governmental functions of a city or town applies to the same extent
12 and in the same manner to its proprietary functions.

13 (c) This section applies to an action:

14 (1) commenced on or after January 1, 1988; and

15 (2) pending on January 1, 1988, and in which the trial, or
16 any new trial or retrial following motion, appeal, or otherwise,
17 begins on or after that date.

18 (d) An action commenced before January 1, 1988, and in which
19 a trial, new trial, or retrial is in progress on that date, is
20 governed by the applicable law in effect prior to that date and
21 that law is continued in effect only for this purpose.

22 SECTION 2. This proposed constitutional amendment shall be
23 submitted to the voters at an election to be held November 3, 1987.
24 The ballot shall be printed to provide for voting for or against
the proposition: "The constitutional amendment establishing

5/22/87 4/21/87 5/6/87

S.G.R. No. 26

- 1 immunity for a city or town from liability for damages arising from
- 2 its proprietary functions."

By: Montford S.J.R. No. 26
(In the Senate - Filed February 26, 1987; March 2, 1987, read first time and referred to Committee on Economic Development; April 21, 1987, reported favorably by the following vote: Yeas 9, Nays 0; April 21, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Harris	x			
Glasgow				x
Anderson				x
Armbrister	x			
Blake	x			
Green	x			
Henderson	x			
Jones	x			
Leedom	x			
Montford	x			
Sims	x			

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XI of the Texas Constitution is amended by adding Section 13 to read as follows:

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(b) A statutory waiver of immunity that applies to the governmental functions of a city or town applies to the same extent and in the same manner to its proprietary functions.

(c) This section applies to an action:

(1) commenced on or after January 1, 1988; and

(2) pending on January 1, 1988, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that date.

(d) An action commenced before January 1, 1988, and in which a trial, new trial, or retrial is in progress on that date is governed by the applicable law in effect prior to that date and that law is continued in effect only for this purpose.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment establishing immunity for a city or town from liability for damages arising from its proprietary functions."

* * * * *

Austin, Texas
April 21, 1987

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Economic Development to which was referred S.J.R. No. 26, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

Harris, Chairman

SENATE FAVORABLE COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

4/21/87
(date)/(time)

Sir:

We, your Committee on ECONOMIC DEVELOPMENT to which was referred
ST226 by marted have on 4/21, 1987, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

- ☒ do pass and be printed
☐ do pass and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no
A revised fiscal note was requested. ☐ yes ☒ no
An actuarial analysis was requested. ☐ yes ☒ no
Considered by subcommittee. ☐ yes ☒ no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Harris, Chairman	✓			
Glasgow, Vice Chairman				✓
Anderson				✓
Armbrister	✓			
Blake	✓			
Green	✓			
Henderson	✓			
Jones	✓			
Leedom	✓			
Montford	✓			
Sims	✓			
TOTAL VOTES	9	1	1	2

Carol Wicks

COMMITTEE CLERK

Harris

CHAIRMAN

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 5, 1987

TO: Honorable O. H. "Ike" Harris, Chairman In Re: Senate Joint Resolution
Committee on Economic Development No. 26
Senate Chamber By: Montford
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 26 (proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would grant immunity to a city or town from liability for damages arising from its proprietary functions. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No fiscal implication to units of local government is anticipated.

Source: Board of Insurance; Secretary of State;
LBB Staff: JO, HES, JWH, AL, BL

AMEND THE CAPTION TO CONFORM
TO THE BODY OF THE BILL

ADOPTED

MAY 6 1987

Betty King
Secretary of the Senate

ADOPTED

MAY 6 1987

Betty King
Secretary of the Senate

Flood

AMENDMENT NO. 1

BY Mustard

1 Amend S.J.R. 26 by striking all below the resolving clause
2 and substituting the following:

3 SECTION 1. Article XI of the Texas Constitution is amended
4 by adding Section 13 to read as follows:

5 Sec. 13. (a) Notwithstanding any other provision of this
6 constitution, the legislature may by law define for all purposes
7 those functions of a municipality that are to be considered
8 governmental and those that are proprietary, including
9 reclassifying a function's classification assigned under prior
10 statute or common law.

11 (b) This section applies to laws enacted by the 70th
12 Legislature, Regular Session, 1987, and to all subsequent regular
13 or special sessions of the legislature.

14 SECTION 2. This proposed constitutional amendment shall be
15 submitted to the voters at an election to be held November 3, 1987.
16 The ballot shall be printed to provide for voting for or against
17 the proposition: "The constitutional amendment authorizing the
18 legislature to define for all purposes the governmental and
19 proprietary functions of a municipality."

Flood Am. #10
5/6/87
5/22/87

9

May 6 1987 Engrossed
Patsy Spaw
Engrossing Clerk

1987 MAY 13 PM 4:00

I certify that the attached is a true and correct
copy of STR 26 which was
received from the Senate on MAY 7 1987 and
referred to the Committee on State Affairs
Patsy Spaw
Chief Clerk of the House

By: Montford, Sarpalius
(Toomey)

S.J.R. No. 26

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XI of the Texas Constitution is amended by adding Section 13 to read as follows:

Sec. 13. (a) Notwithstanding any other provision of this constitution, the legislature may by law define for all purposes those functions of a municipality that are to be considered governmental and those that are proprietary, including reclassifying a function's classification assigned under prior statute or common law.

(b) This section applies to laws enacted by the 70th Legislature, Regular Session, 1987, and to all subsequent regular or special sessions of the legislature.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to define for all purposes the governmental and proprietary functions of a municipality."

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 5, 1987

TO: Honorable O. H. "Ike" Harris, Chairman In Re: Senate Joint Resolution
Committee on Economic Development No. 26
Senate Chamber By: Montford
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 26 (proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would grant immunity to a city or town from liability for damages arising from its proprietary functions. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No fiscal implication to units of local government is anticipated.

Source: Board of Insurance; Secretary of State;
LBB Staff: JO, HES, JWH, AL, BL

HOUSE COMMITTEE REPORT

1st Printing

By: Montford, Sarpalius
(Toomey)

S.J.R. No. 26

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SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing the legislature to define for all purposes the governmental and proprietary functions of a municipality."

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

5/14/87
(date)

Sir:

We, your COMMITTEE ON STATE AFFAIRS,

to whom was referred SJR 26 have had the same under consideration and beg to report
(measure)
back with the recommendation that it

☒ do pass, without amendment.

☐ do pass, with amendment(s).

☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

An author's fiscal statement was requested. ☐ yes ☒ no

~~The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.~~

This measure ☐ proposes new law. ☒ amends existing law.

House Sponsor of Senate Measure Toomey

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Laney, Ch.			<input checked="" type="checkbox"/>	
Hill, P., V.C.	<input checked="" type="checkbox"/>			
Tallas, C.B.O.	<input checked="" type="checkbox"/>			
Cain		<input checked="" type="checkbox"/>		
Danburg	<input checked="" type="checkbox"/>			
Gavin	<input checked="" type="checkbox"/>			
Gibson	<input checked="" type="checkbox"/>			
Guerrero	<input checked="" type="checkbox"/>			
Haley	<input checked="" type="checkbox"/>			
Leonard	<input checked="" type="checkbox"/>			
Perez	<input checked="" type="checkbox"/>			
Riley	<input checked="" type="checkbox"/>			
Saunders	<input checked="" type="checkbox"/>			

Total

11 aye

1 nay

1 present, not voting

0 absent

James Laney
CHAIRMAN

Laura Collier
COMMITTEE COORDINATOR

By: Montford, Sarpalauis
(Toomey)

Bill Analysis

Background

The Texas Constitution contains a provision known as the "open courts" doctrine. The intent of the provision is to provide access to the courts for a redress of grievances. Recent court rulings have held this provision to limit the authority of the legislature to address certain problems in the civil justice system.

As a result it has been the sole prerogative of the court to define what constitutes the governmental and proprietary functions of a municipality.

Purpose

To grant the Legislature the authority to define governmental and proprietary functions of a municipality.

Synopsis

States that the 70th Legislature may define for all purposes the functions of a municipality that are deemed to be governmental or proprietary..

Rulemaking Authority

It is the opinion of the committee that this bill delegates no new rulemaking authority to any state agency, officer, department or institution.

Summary of committee action

On March 23, 1987 and April 6, 1987, the committee held public hearings on tort reform issues. At that time all House Bills relative to tort reform were laid before the committee, including those resolutions relative to open courts and the power of the legislature to limit municipal liability. Numerous witnesses were heard both for and against these propositions.

On May 14, 1987, the committee voted to report S.J.R. 26 to the full House, without amendment and with the recommendation it do pass by a record vote of 11 ayes, 1 nay, and 1 member present, not voting.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 5, 1987

TO: Honorable O. H. "Ike" Harris, Chairman In Re: Senate Joint Resolution
Committee on Economic Development No. 26
Senate Chamber By: Montford
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 26 (proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions) this office has determined the following:

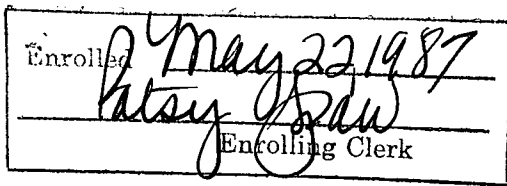
The resolution proposes a constitutional amendment which, if adopted, would grant immunity to a city or town from liability for damages arising from its proprietary functions. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No fiscal implication to units of local government is anticipated.

Source: Board of Insurance; Secretary of State;
LBB Staff: JO, HES, JWH, AL, BL

3



S.J.R. No. 26

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FILE
[Signature]

S.J.R. No. 26

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 26 was adopted by the Senate on May 6, 1987, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.J.R. No. 26 was adopted by the House on May 21, 1987, by the following vote: Yeas 134, Nays 14, one present not voting.

Chief Clerk of the House

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 5, 1987

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Committee on Economic Development No. 26
Senate Chamber By: Montford
Austin, Texas

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Source: Board of Insurance; Secretary of State;
LBB Staff: JO, HES, JWH, AL, BL

C. C.
H. H.

S.J.R. No. 26

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 26 (1) was adopted by the
Senate on May 6 (2), 1987, by the following vote:
Yeas 30 (3), Nays 1 (4).

Secretary of the Senate

I hereby certify that S.J.R. No. 26 (1) was adopted by the
House on May 21 (5), 1987, by the following vote:
Yeas 134 (6), Nays 14 (7), one present not voting.

Chief Clerk of the House

S. J. R. No. 26

By M. H. H.

SENATE JOINT RESOLUTION

proposing a constitutional amendment relating to the immunity of a city or town from liability for damages arising from its proprietary functions.

87210 Filed with the Secretary of the Senate

MAR 2 1987 Read and referred to Committee on **ECONOMIC DEVELOPMENT**

APR 21 1987 Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

MAY 6 1987

Senate and Constitutional Rules to permit consideration suspended by: unanimous consent

30 years, 1 days

MAY 6 1987 Read second time, amended, and ordered engrossed by: unanimous consent
a viva voce vote

~~_____~~ years, ~~_____~~ days.

MAY 8 1987 Caption ordered amended to conform to the body of the bill.

MAY 7 1997 Senate and Constitutional 3 Day Rule suspended by a vote of 30 years, 1 days.

MAY 6 1987 Read third time, _____, and passed by 30 years, 1 days.

SECRETARY OF THE SENATE

OTHER ACTION:

May 6, 1987 Engrossed

~~100-100000~~ 7 1987 Sent to House

Engrossing Clerk

MAY 7 1987 Received from the Senate

MAY 8 1987 Read first time and referred to Committee on State Affairs

5-14-87 Reported favorably ~~amended~~, sent to Printer 12:00 pm. MAY 18 1987

MAY 18 1987 Printed and Distributed 8:07 p.m.

MAILED MAY 19 1987 Sent to Committee on Calendars 12:07 PM

MAY 21 1987 Read second time ~~(amended)~~ and finally adopted
~~failed adoption~~ by Record Vote of 134 yeas, 14 nays, 1 present not voting.

_____ Read third time (amended) and finally adopted
failed adoption by a Record Vote of _____ yeas, _____ nays, _____ present not voting.

Caption ordered amended to conform to body of resolution

MAY 22 1987 Returned to Senate.

CHIEF CLERK OF THE HOUSE

May 22 1987 Returned from House without amendment.

_____ Returned from House with _____ amendments.

_____ Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, _____, and _____.

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

107 11 16 11 8 09

107 11 16 11 8 09

3

45